REMARKS

Claims 1-37 are all the claims pending in the application. By this Amendment, new claims 36 and 37 are added.

Claims 1, 2-5, 7-11, 13 and 23-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta (U.S. Patent No. 6,204,858; hereinafter "Gupta") in view of Leclerc et al. (U.S. Patent No. 5,048,103; hereinafter "Leclerc"). Claims 6 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta in view of Leclerc, and further in view of Acker et al. (U.S. Patent No. 6,009,209; hereinafter "Acker"). Claims 14-22 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta and Leclerc, as applied to claim 7 above, and further in view of Benati et al. (U.S. Patent No. 5,432,863; hereinafter "Benati"). Claims 30 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta in view of Leclerc, as applied to claim 3, and further in view of Tanaka (U.S. Patent No. 6,210,048; hereinafter "Tanaka"), Benati and DeLuca (U.S. Patent No. 6,407,777; hereinafter "DeLuca"). Claims 28 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta in view of Leclerc as applied to claims 27 and 7, and further in view of Ueda et al. (U.S. Patent No. 5,986,642; hereinafter "Ueda"). Claims 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Applicant adds new claims 36 and 37 and submits the following arguments in traversal of the prior art rejections.

Rejection of Claims 1, 2-5, 7-11, 13 and 23-27 under § 103(a) over Gupta in view of Leclerc

Applicant respectfully submits that claim 1 is believed to be patentable because Leclerc is improper prior art. Leclerc is a nonanalogous art and cannot be properly used as a basis for a

§ 103 rejection. M.P.E.P. § 2141.01(a). In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *Id.*

Leclerc relates to the resetting of images wherein a resetting is performed on a second image which is distorted with respect to a first image. Col. 3, lines 65-68. The resetting is performed on medical images for diagnosis to compare images representing the same scenes acquired at different times and/or by different protocols. Col. 1, lines 9-12 and lines 18-38.

In contrast, the Applicant's invention is directed to the setting of a region of an image for red eye correction. The red eye effect occurs when a picture is taken by a camera and a person's pupil appears a deep red or gold color. This is in a field that is entirely different from Leclerc which strives to reset one image over another so that two images can be compared for medical diagnostic purposes. Although Leclerc teaches the selection of certain landmarks, Leclerc does not deal with the modification of the landmarks themselves, whereas the present invention deals with the correction of the red eye phenomenon. Therefore, the functional differences between Leclerc and the present invention show that the disclosure of Leclerc would not be reasonably pertinent to the present invention. *See* M.P.E.P. § 2141.01(a).

In addition, the images to be reset in Leclerc are medical images used for diagnosis, especially those acquired by a tomodensitometry method, an NMR method, a gammagraphy method and an angiography method, and the images are acquired by different methods, methods such as X-rays or ultrasound.

Accordingly, the medical imagery is drawn from a different field of endeavor from the photographic imaging of the present claims, and the nature of the problems addressed significantly differs. Thus, Applicant submits that Leclerc is not proper prior art.

Assuming *arguendo*, that Leclerc is analogous art, Leclerc teaches away from achieving the present invention as claimed. Claim 1 recites setting said second region to be subjected to red eye correction by designating only the red eye by the operator *manually*. In contrast, Leclerc discloses that the "manual state, naturally, has to be ruled out for common use as it calls for a competent operator and requires time which a user often lacks." Col. 2, lines 52-54. In effect, Leclerc teaches away from any sort of manual operation as recited in the claim. Therefore, by combining the references, the Examiner has engaged in impermissible hindsight.

Therefore, for at least the above reasons, the Examiner has not established a *prima facie* case of obviousness and claim 1 is believed to be patentable.

Claims 2-5 and 23-25, which depend from claim 1, are believed to be patentable for at least the reasons submitted for claim 1.

Similarly, claim 7 and claims 8-11, 13, and 26-27, which depend from claim 7, are believed to be patentable for at least the reasons submitted for claim 1.

Alternatively, or in addition, claims 25 and 27 are believed to be patentable because Gupta and Leclerc, fail to teach, suggest, or provide motivation for wherein the step of automatically extracting further includes prescanning the image to form the first region and fine scanning the image to form the second region. In the Office Action, the Examiner argues that the "user prescans the image" and the "system electronically scans the image finely." Although

Gupta discloses that the "user selects an area in a digital image," (col. 3, lines 12-17) there is nothing to suggest that there is some sort of fine scanning of the user-selected area. Rather, Gupta only discloses that "user-selected areas of the image are then automatically identified," and that color enhancement is subsequently used to identify the red eye effect. Col. 3, lines 18-33. Because no suggestion or motivation is provided regarding fine scanning the image, claims 25 and 27 are believed to be patentable.

Rejection of Claims 6 and 12 under § 103(a) over Gupta in view of Leclerc and further in view of Acker

Claims 6 and 12, which depend from claims 1 and 7, respectively, are believed to be patentable for at least the reasons submitted for their respective base claims and because Acker fails to make up for the deficiencies of Gupta and Leclerc.

Rejection of Claims 14-22 and 32 under § 103(a) over Gupta and Leclerc, and further in view of Benati

Claims 14-22, which ultimately depend from claim 7, and claim 32, which ultimately depends from claim 1, are believed to be patentable for at least the reasons submitted for their respective base claims and because Benati fails to make up for the deficiencies of Gupta and Leclerc.

Rejection of Claims 30 and 31 under § 103(a) over Gupta in view of Leclerc, and further in view of Tanaka, Benati and DeLuca

Claims 30 and 31, which ultimately depend from claim 1, are believed to be patentable for at least the reasons submitted for claim 1 and because Tanaka, Benati, and DeLuca fail to make up for the deficiencies of Gupta and Leclerc.

Rejection of Claims 28 and 29 under § 103(a) over Gupta in view of Leclerc, and further in view of Ueda

Claims 28 and 29, which ultimately depend from claim 7, are believed to be patentable for at least the reasons submitted for claim 7 and because Ueda fails to make up for the deficiencies of Gupta and Leclerc.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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